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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

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THE PEOPLE,

Plaintiff and Respondent,

v.

SHAWN RICHARD GUTIERREZ,

Defendant and Appellant.

C081523

(Super. Ct. No. CRF150914)

Defendant Shawn Richard Gutierrez appeals pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Having reviewed the record as required by *Wende*, we affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

**BACKGROUND**

Between January and May 2015, defendant repeatedly harassed his former girlfriend Miriam Melgoza and her new boyfriend Karamjit Samra. He vandalized their vehicles, and drove by Melgoza's home and workplace. Defendant had a prior history of

stalking Melgoza and had made threats to kill himself and Melgoza. In August 2014 the superior court issued a criminal protective order prohibiting defendant from contact or stalking Melgoza. The protective order remained in effect during the current stalking offense.

A complaint charged defendant with stalking (Pen. Code, § 646.9, subd. (b)),<sup>1</sup> with a prior stalking conviction (§ 646.9, subd. (c)(2)), two felony vandalism counts (§ 594, subd. (b)(1)), one misdemeanor violation of a court order (§ 273.6, subd. (a)), and three misdemeanor vandalism counts (§ 594, subd. (b)(2)(A)). In addition, the probation office filed a violation of probation. Defendant pleaded no contest to stalking and admitted the violation of probation. Pursuant to the stipulated sentence, the trial court sentenced defendant to the midterm of three years for the stalking conviction, with 44 days of custody credit, ordered defendant to pay a \$300 restitution fine (§ 1202.4), and imposed and stayed a matching parole revocation fine (§ 1202.45). The trial court also issued a 10-year protective order for Melgoza and a five-year protective order as to Samra. On the violation of probation, the trial court sentenced defendant to the upper term of three years concurrent, with 217 days of custody credit, reiterated the previously imposed restitution fine and the direct victim restitution of \$6,275.77, and unstayed the probation revocation fine. The remaining counts were dismissed.

The victims submitted claims for restitution. Melgoza requested \$2,639.21, including claims for replacing a car tire, auto body work, and lost wages. Samra requested \$6,444.05, including claims for multiple replacements of car tires, installation of a video surveillance system, auto body work, car towing costs, and lost wages. The trial court found the restitution appropriate and ordered defendant to pay \$2,639.21 direct restitution to Melgoza and \$6,444.05 to Samra.)

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

## **DISCUSSION**

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. To date, defendant has not filed a supplemental brief. Having undertaken an examination of the entire record pursuant to *Wende*, we find no arguable error that would result in a disposition more favorable to defendant.

## **DISPOSITION**

The judgment is affirmed.

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RAYE, P. J.

We concur:

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MURRAY, J.

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RENNER, J.